

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
RNK, Inc. d/b/a RNK Telecom,)	
Nuvio Corporation,)	
Unipoint Enhanced Services d/b/a PointOne,)	CC Docket No. 99-200
Dialpad Communications, Inc.,)	
Vonage Holdings Corporation, and)	
VoEX, Inc.)	
)	
Petitions for Limited Waiver of)	
Section 52.15(g)(2)(i) of the Commission's Rules)	
Regarding Access to Numbering Resources)	

COMMENTS OF SBC INTERNET SERVICES, INC.

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I. INTRODUCTION AND SUMMARY

SBC Internet Services, Inc. (SBCIS) submits the following comments on the petitions filed by Dialpad, Nuvio, PointOne, RNK, VoEX, and Vonage (collectively, the VoIP Petitioners)¹ seeking waivers of section 52.15(g)(2)(i) of the Commission's rules to obtain direct access to numbering resources from the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator (PA).² SBCIS obtained a similar waiver earlier this year,³ and we support allowing the VoIP Petitioners to have the same direct access to numbering resources that the Commission made available to SBCIS. The only thing SBCIS asks, however, is that all waiver recipients – including SBCIS and each of the VoIP Petitioners – be subjected to the same numbering rules and requirements, so that all VoIP providers receiving numbering waivers can compete fairly on a level regulatory playing field.

II. DISCUSSION

A. SBCIS Supports Allowing VoIP Providers to Obtain Direct Access to Numbering Resources.

SBCIS strongly supports allowing VoIP providers to obtain direct access to numbering resources from NANPA and/or the PA – both on an interim basis pursuant to the Commission's waiver process and on a permanent basis pursuant to a rule change emanating from the

¹ *Wireline Competition Bureau Seeks Comment on RNK, Inc. d/b/a RNK Telecom, Nuvio Corporation, Unipoint Enhanced Service d/b/a PointOne, Dialpad Communications, Inc., Vonage Holdings Corporation, and VoEX, Inc. Petitions for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200, Public Notice, DA 05-663 (March 11, 2005).

² Section 52.15(g)(2)(i) of the Commission's rules currently requires that an applicant for numbering resources demonstrate that it is authorized to provide service in the area for which the numbering resources are being requested. 47 C.F.R. § 52.15(g)(2)(i). In the wireline context, the Commission has interpreted this rule as requiring state certification. *See Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7613 ¶ 97 (2000). Because VoIP providers are usually not state certificated common carriers, they would need a waiver of section 52.15(g)(2)(i) to obtain direct access to numbering resources.

³ *Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, FCC 05-20 (released Feb. 1, 2005) (*SBCIS Numbering Waiver Order*).

Commission's *IP-Enabled Services NPRM*.⁴ In petitioning the Commission for a waiver itself, SBCIS explained that numbering resources are not "owned" by a particular carrier.⁵ Rather, they are a "public resource" that should be used to serve the public interest, for example, by facilitating the introduction of new technologies and services for residential and business consumers across the nation.⁶

Like SBCIS, the VoIP Petitioners are seeking waivers so that they can obtain numbering resources to deploy "IP-enabled services, including Voice over Internet Protocol (VoIP) services, on a commercial basis to residential and business customers."⁷ The VoIP Petitioners acknowledge that they already can obtain *indirect* access to numbering resources by purchasing retail IP-PSTN connectivity services from LECs today (e.g., Primary Rate Interface (PRI) lines).⁸ They argue, however, that these retail IP-PSTN connectivity services are saddled with a variety of limitations and inefficiencies.⁹ As RNK explains, "VoIP providers are put in the position of ordering transmission facilities for the purpose of obtaining numbers, rather than for efficient interconnection."¹⁰ By contrast, with direct access to numbering resources, the VoIP Petitioners

⁴ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP-Enabled Services NPRM*).

⁵ *SBC IP Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200, at 4 (filed July 7, 2004) (SBCIS Petition for Limited Waiver).

⁶ SBCIS Petition for Limited Waiver at 4-5. *See also* 47 U.S.C. § 157 ("It shall be the policy of the United States to encourage the provision of new technologies and services to the public.").

⁷ PointOne Petition at 1. *See also* Dialpad Petition at 3; Nuvio Petition at 1; RNK Petition at 1; VoEX Petition at 3; Vonage Petition at 1. Also like SBCIS, the VoIP Petitioners are seeking "limited" waivers, lasting only until the Commission adopts final numbering rules for VoIP providers based on the *IP-Enabled Services NPRM*. Dialpad Petition at 7; Nuvio Petition at 2; PointOne Petition at 1, 7; RNK Petition at 16; VoEX Petition at 4; Vonage Petition at 2.

⁸ *See* Dialpad Petition at 4; RNK Petition at 3-6; VoEX Petition at 4; Vonage Petition at 2.

⁹ *See* Dialpad Petition at 5; PointOne Petition at 4-5; RNK Petition at 3-6; Vonage Petition at 3.

¹⁰ RNK Petition at 4.

claim that they would have greater flexibility to pursue more efficient forms of IP-PSTN connectivity (e.g., trunk side tandem interconnection), and thus greater opportunities to develop innovative new services for American consumers.¹¹ SBCIS made many of these same arguments to the Commission in its original waiver petition and we support the VoIP Petitioners who raise them here now.

SBCIS would particularly like to commend Vonage for recognizing the limitations and inefficiencies in current retail IP-PSTN connectivity services. In originally casting doubt on the merits of SBCIS's waiver petition, Vonage claimed that, for retail interconnection services offered by CLECs, "the locations, calling scopes and installation schedules are satisfactory."¹² But now, while seeking a waiver of its own, Vonage argues that trunk-side interconnection will enable it "to overcome the availability and scalability limitations in retail interconnections with the PSTN."¹³ Although some parties might be tempted to question the motives behind Vonage's newfound concerns about retail IP-PSTN connectivity services, SBCIS instead is simply gratified that Vonage has chosen to take this new, more enlightened view of the need for direct access to numbering resources and we are pleased to support its waiver petition.

B. All VoIP Providers Obtaining Numbering Waivers Should Be Subjected to the Same Numbering Responsibilities.

While SBCIS supports the VoIP Petitioners' waiver requests, providers who obtain direct access to numbering resources pursuant to waivers must also take on associated numbering obligations. As discussed below, there are two primary sources for these numbering obligations: (1) numbering rules promulgated by the Commission (and any companion numbering rules

¹¹ See Dialpad Petition at 5-6; VoEX Petition at 5-6; Vonage Petition at 3.

¹² Vonage Comments, CC Docket No. 99-200, at 2-3 (Aug. 16, 2004).

¹³ Vonage Petition at 3.

promulgated by state commissions under a valid delegation of federal authority);¹⁴ and (2) waiver-specific numbering requirements imposed by the Commission. In both cases, the Commission must ensure that any applicable numbering obligations are imposed equally on all of the VoIP providers that receive waivers to obtain direct access to numbering resources. The equal imposition of numbering obligations will not only further the efficient use of numbering resources, but will also ensure that all of these VoIP providers compete fairly on a level regulatory playing field.

1. Compliance with Numbering Rules.

In seeking a limited waiver of section 52.15(g)(2)(i) of the Commission's rules, SBCIS agreed to satisfy all of the Commission's other numbering rules, including (but not limited to) such requirements as local number portability, number pooling, facilities readiness, and Numbering Resource Utilization Forecast (NRUF) reports. As a condition for granting SBCIS's waiver request, the Commission required SBCIS "to comply with the Commission's other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices"¹⁵ The Commission observed that compliance with these requirements would "ensure[] that the limited numbering resources of the NANP are used efficiently."¹⁶

All of the VoIP Petitioners, like SBCIS before them, are seeking a limited waiver of one specific Commission numbering rule: section 52.15(g)(2)(i). Each of the VoIP Petitioners (except PointOne) has also expressly agreed to comply with all other numbering rules and

¹⁴ Congress gave the Commission "exclusive jurisdiction" over the portions of the North American Numbering Plan that pertain to the United States, but also allowed the Commission to delegate numbering authority to state commissions. *See* 47 U.S.C. § 251(e)(1).

¹⁵ *SBCIS Numbering Waiver Order* ¶ 4.

¹⁶ *SBCIS Numbering Waiver Order* ¶ 9.

requirements.¹⁷ Accordingly, just as it did for SBCIS, the Commission should explicitly require the VoIP Petitioners to comply with all other numbering rules and requirements when it grants their waiver requests. Doing so will ensure the efficient use of NANP numbering resources and, of equal importance, it will ensure that none of the VoIP Petitioners obtains an unfair regulatory advantage over other waiver recipients.

2. Compliance with Waiver-Specific Requirements.

In addition to requiring SBCIS to comply with existing numbering rules and requirements, the Commission also imposed two additional conditions on SBCIS when it granted our waiver. As discussed below, the Commission should ensure that these same conditions are imposed equally on all VoIP providers that obtain direct access to numbering resources pursuant to a waiver of the Commission's rules. Of course, if the Commission no longer deems these requirements to be necessary, it should also modify SBCIS's waiver accordingly.

30-Day Notice. In granting SBCIS's waiver request, the Commission stated that SBCIS "must submit any requests for numbering resources to the Commission and the relevant state commission at least 30 days prior to requesting resources from NANPA or the PA."¹⁸ The Commission did not, however, explain its rationale for creating this 30-day notice requirement or describe how the notice requirement would assist the Commission in administering numbering resources. The Commission also did not address why the notice requirement is necessary, given

¹⁷ Dialpad Petition at 4 ("Dialpad will comply with all of the relevant conditions established by the Commission in the *SBC-IS Waiver Order*."); Nuvio Petition at 2 ("Nuvio is amenable to complying with the numbering resource-related conditions that the Commission imposed upon SBCIS in paragraphs 9 and 10 of the Order."); RNK Petition at 13 ("RNK accepts the same numbering-related conditions that were imposed on SBCIS."); VoEX Petition at 4 ("VoEX will comply with all of the relevant conditions established by the Commission in the *SBC-IS Waiver Order*."); Vonage Petition at 2 ("Vonage will comply with all of the conditions established by the Commission in the *SBC-IS Waiver Order*."). SBCIS assumes that PointOne's failure to express a similar commitment was an oversight, and we trust that PointOne will affirmatively state its commitment to abide by the Commission's numbering rules and requirements when it files reply comments in this docket.

¹⁸ *SBCIS Numbering Waiver Order* ¶ 9.

that NANPA and the PA already have rigorous processes in place to screen out non-compliant applications for numbering resources. Further, the Commission does not appear to have considered whether adding another full month to the process for obtaining numbering resources would adversely affect a VoIP provider's ability to provision service to its customers in a timely fashion, or whether this additional month would competitively disadvantage a VoIP provider compared to traditional carriers, which are not subject to this delay.

Thus, upon further reflection and in light of the extensive screening processes already implemented by NANPA and the PA, the Commission may not wish to maintain a notice requirement going forward. Alternatively, the Commission may wish to reduce the 30-day notice period to a more manageable timeframe, such as 10 days. Whichever path the Commission chooses, however, it must ensure that all waiver recipients are subject to the same requirements so that the recipients can compete with each other on a fair and equitable basis.

Facilities Readiness. Under the Commission's facilities readiness requirement, an application for initial numbering resources must include evidence demonstrating that the applicant is "capable of providing service within sixty (60) days of the numbering resources activation date."¹⁹ Pursuant to Commission orders and industry procedures, an applicant can make this showing through a variety of evidence, such as an executed interconnection agreement with a LEC; a business plan to provide service in the area where numbering resources are sought; network planning documents demonstrating that equipment has been purchased and is, or will be, operational; a confirmation letter from the entity with which the applicant will interconnect; or other similar evidence.²⁰

¹⁹ 47 C.F.R. § 52.15(g)(2)(ii).

²⁰ See *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd at 7615 ¶ 97 (2000); NANPA Fact Sheet "Effects of the FCC's NRO Order on Code

In its waiver petition, SBCIS told the Commission that it was fully capable of satisfying the facilities readiness requirement. In the *SBCIS Numbering Waiver Order*, the Commission expressly imposed that requirement on SBCIS and observed that SBCIS “should be able to satisfy this requirement using the same type of information submitted by other carriers.”²¹ The Commission appears to have recognized, however, that because SBCIS is an information service provider, and not a common carrier, SBCIS would not ordinarily enter into state-approved interconnection agreements with carriers.²² Accordingly, the Commission stated that if SBCIS is unable to submit a state-approved interconnection agreement, SBCIS should submit “evidence that it has ordered an interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled services.”²³ The Commission also noted that SBCIS cannot rely on any such tariff if it is subject to a section 205 investigation by the Commission.²⁴

All of the VoIP Petitioners state that they are willing and able to comply with the same facilities readiness requirements imposed on SBCIS under the Commission’s rules and the *SBCIS Numbering Waiver Order*.²⁵ Some of the VoIP Petitioners, however, point out that they may wish to obtain connectivity between their IP networks and the PSTN through means other

Administration, Updated 06/15/2004,” at http://www.nanpa.com/pdf/nro_effects.pdf. In addition, the Commission has delegated authority to the states to adopt additional facilities readiness criteria in certain circumstances.

²¹ *SBCIS Numbering Waiver Order* ¶ 10.

²² *SBCIS Numbering Waiver Order* ¶ 10.

²³ *SBCIS Numbering Waiver Order* ¶ 10.

²⁴ *SBCIS Numbering Waiver Order* ¶ 10. The Commission observed that “[t]his requirement also helps to address the concerns raised by Vonage regarding the potential for SBCIS to obtain discriminatory access to the network of its incumbent LEC affiliate.”). *Id.*

²⁵ See *supra* note 17. Although PointOne failed to make a broad commitment to comply with all of the Commission’s numbering rules and requirements, PointOne stated that it did not object to complying with the facilities-readiness requirements set forth in paragraph 10 of the *SBCIS Numbering Waiver Order*. PointOne Petition at 8 (“PointOne is not opposed to a similar condition on its grant of authority.”).

than a state-approved interconnection agreement with an ILEC or a tariffed connectivity service from an ILEC, such as by purchasing connectivity services from a CLEC or other type of carrier.²⁶ In such cases, the VoIP Petitioners ask the Commission to accept other appropriate evidence of facilities readiness, such as “traffic exchange agreements with any LEC serving the relevant geographic area”²⁷ or other similar forms of evidence.²⁸

SBCIS does not object to these requests from the VoIP Petitioners – so long as SBCIS is afforded the same opportunities to purchase connectivity services from a diverse group of providers. As the VoIP Petitioners appear to recognize, there are a multitude of service providers, including CLECs, IXCs and wireless carriers, that offer connectivity services through mechanisms other than state-approved interconnection agreements or federal/state tariffs.²⁹ Thus, it would be most unfortunate if the Commission, with the intention of promoting competition through the deployment of innovative, new IP-based services, unwittingly *restricted* competition in the market for IP-PSTN connectivity services by forcing VoIP providers to deal only with carriers that offer these services through state-approved interconnection agreements or federal/state tariffs.

Accordingly, if the Commission grants the VoIP Petitioners’ waiver requests, the Commission should make clear that: (a) the VoIP Petitioners must comply with the conditions imposed on SBCIS in paragraph 10 of the *SBCIS Numbering Waiver Order* when purchasing

²⁶ See PointOne Petition at 8; RNK Petition at 14-15.

²⁷ PointOne Petition at 8.

²⁸ See Dialpad Petition at 7; Nuvio Petition at 2 n.1; RNK Petition at 14-15; VoEX Petition at 6-7.

²⁹ For example, the Commission has given CLECs permission not to tariff certain types of services, and has *prohibited* the tariffing of most IXC services and all CMRS services. See *Hyperion Telecommunications, Inc.*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 8596 (1997); *Sprint PCS and AT&T Corp.*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13,192 ¶ 7 (2002); 47 C.F.R. § 61.19.

services from an ILEC (which each of the VoIP Petitioners has already agreed to do); and (b) the VoIP Petitioners and SBCIS are permitted to demonstrate facilities readiness through any of the methods approved by the Commission and NANPA³⁰ when purchasing services from a non-ILEC.³¹

III. CONCLUSION

For all of the foregoing reasons, SBCIS supports the VoIP Petitioners' waiver requests to obtain direct access to numbering resources from NANPA and/or the PA. At the same time, we strongly urge the Commission to promote fair competition by ensuring that *all* VoIP providers who receive waivers are treated equally and are subjected to the same waiver conditions.

Respectfully Submitted,

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³⁰ See *supra* note 20.

³¹ SBCIS would consider purchasing such services when they are offered in a manner consistent with its previously stated position that IP-PSTN traffic is subject to applicable access charges. See SBCIS Petition for Limited Waiver at 3 n.6.